IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 929 OF 1993

1. Bombay Suburban Secondary Teachers Association,a registered Trade Union having its office at c/o C.L.Boys School, Dadar, Bombay-400028.]

1A. Bombay Junior College Teachers Union, a registered union having its office at B/19, Madina Manzil, S.V.Road, Dahisar (E), Bombay-68.]

2. Mrs. Prabha Prakash Balang, residing at Ellora A.13, Anushakti Nagar, Bombay - 400 094.]

3. Bhavana Ramesh Dhoble, Indian inhabitant residing at Gulbard 8-D, Anushakti Nagar, Bombay - 400 094.]

4. Ujwala Vijay Vaidya of Bombay, Indian inhabitant, residing at Ellora, D-2, Anushakti Nagar, Bombay - 400 094.]

5. Nancy Khajanji, Nalanda, D-2, Anushaktinagar, Bombay - 400 094.]

6. Kumud Vasant Hattangadi, Bombay Indian inhabitant residing at 11, Shantiniketan, Anushakti Nagar, Bombay - 400 094.]

7. Maya Sharad Nene, of Bombay, Indian inhabitant residing at Ajanta D-14, Anushakti Nagar, Bombay - 400 094.]

8. Usha Keshav Phadke of Bombay Indian inhabitant, C-10 Indraprashta Anushaktinagar, Bombay - 400 094.]

9. Mrs. Hema Kannan, C-28, Kapilvasthu Anushaktinagar, Bombay - 400 094.]

10. Mrs. Sheela Jangam,Type III RCF]

Colony, Chembur - 400 074.]

11. Rajshree Suresh Gangotra,]
1208, Nilgiri, Anushaktinagar,]
Bombay 400 094.]

12. Mrs. Kavita Moharir,]
HPS 30, Vihar House, IIT Powai,]
Bombay - 400 076.]

13. Mrs. Mary Jose,]
residing at 1911 - Nilgiri,]
BARC Quarters, Anushaktinagar,]
Bombay - 400 094.]

14. Mrs. Tara Varshney, residing at]
C-19. Ajanta, Anushaktinagar,]
Bombay - 400 094.]

15. Mrs. Laxmi Srinivasan, residing at]
3/C, Nandadevi, Anushaktinagar,]
Bombay - 400 094.]

16. Mrs. Rukmini Menon, residing at]
16-D, Everest, Anushaktinagar,]
Bombay - 400 094.]

17. Gracy George, residing at]
P-14, Flat No.6, SPDC Colony,]
Bombay - 400 094.]

18. Raj Kamini Prithviraj,]
residing at 18-A, Annapurna,]
Anushaktinagar, Bombay - 400 094.]

19. Mrs. Savitri Devendra Srivastava,]
residing at Devendranath, 14-B,]
Dhawalgiri, Anushaktinagar,]
Bombay - 400 094.]

20. Mrs. Vibhavari Keshav Bhagwat,]
residing at 1-B, Anushaktinagar,]
Bombay - 400 094.]

21. Mrs. Vandana Vasant Bedekar,]
Nalanda, D/8, Anushaktinagar,]
Bombay - 400 094.]

22. Mrs. Indu Ved Prakash Kansara,]
residing at 11-A, Dhavalgiri,]
Anushaktinagar, Bombay - 400 094.]

23. Mrs. Sumita Mukherjee,]
residing at C-11, Dhawalgiri,]
Anushaktinagar, Bombay - 400 094.]

24. Mrs. Sudha Bhuvanchandra Bhatt,]
residing at 58, Mount Abu,]
Anushaktinagar, Bombay - 400 094.]

25. Mrs. Annamma George,]
residing at 13-A, Takshasila BARC]
Quarters, Anushaktinagar,]
Bombay - 400 094.]

26. Mrs. Annamma Jacob,]
residing at 64/Satpura,]
Anushaktinagar, Bombay - 400 094.]

27. Mrs. Malathy Radhakrishnan,]
residing at 7/C, Gulmarg,]
Anushaktinagar, Bombay - 400 094.]

28. Mrs. Anuradha Arvind Deshpande,]
residing at 19-C, Nandadevi,]
Anushaktinagar, Bombay - 400 094.]

29. Mrs. Seema Prakash Vichare,]
residing at RCF Colony, Type II,]
B 8/Room 168, Chembur, Bombay-94.]

30. Mrs. Anandavalli Ganesh,]
residing at A-10, Sathyam, TMC]
Quarters, Mandala Bombay-400 088.]

31. Mrs.Vijayalakshmi Indrakumar Sharma]
residing at 22, Sabharigiri,]
Anushaktinagar, Bombay - 400 094.]

32. Mrs. Snehal Ravi Kher,]
residing at B-20, Indraprastha,]
Anushaktinagar, Bombay - 400 094.]

33. Mrs. Vasanti Shaymrao Hivraye,]
residing at Vindhya C/4, Anushakti]
Nagar, Bombay - 400 094.]

34. Mrs. Suhasini Kavimandan,]
residing at 65, Mount Abu,]
Anushaktinagar, Bombay - 400 094.]

35. Mrs. Kalpana Sudhir Vaidya,]

residing at 10-B, Kanchanganga,]
Anushaktinagar, Bombay - 400 094.]

36. Mrs. Savita Madhav Joshi,]
residing at 67, Satpura,]
Anushaktinagar, Bombay - 400 094.]

37. Mrs. Padmavathi,]
residing at A/19, Takshasila,]
Anushaktinagar, Bombay - 400 094.]

38. Mrs. Ragini Govind Mahajan,]
residing at 39, Dwarka,]
Anushaktinagar, Bombay - 400 094.]

39. Mrs. Kuntidevi Sharma,]
residing at 11-B, Almora,]
Anushaktinagar, Bombay - 400 094.]

40. Miss Mandvi Hemchandra Mandlik,]
residing at D-15/1, SPDC Colony,]
Naval Store Depot, Mankhurd,]
Bombay - 400 088.]

41. Mrs. Lekha Vijayan,]
residing at Anushaktinagar,]
Bombay - 400 094.]

42. Mrs. Maneesha Avinash Nai,]
residing at 10-B, Nandadevi,]
Bombay - 400 094.]

43. Mrs. Anagha Shrikant Deshpande,]
residing at B-28, Ajanta,]
Anushaktinagar, Bombay - 400 094.]

44. Mrs. Jessy George Thomas,]
residing at 47, Mussourie,]
Anushaktinagar, Bombay - 400 094.]

45. Mrs. Kiran Harish Dhall,]
residing at D-29, Ajanta,]
Anushaktinagar, Bombay - 400 094.]

46. Iyer Rajam,]
residing at 8-A, Gulmarg,]
Anushaktinagar, Bombay - 400 094.]

47. Mrs. Leelavati Balakrishnan,]
residing at 12/C, Kanchanjunga,]
Anushaktinagar, Bombay - 400 094.]

48. Mrs. Sreejata Tapan Mukherjee, residing at 1A, Annapurna, Anushaktinagar, Bombay - 400 094.

49. Rehana Hamid Siddiqui, residing at 10-A, Dhawalgiri, Anushaktinagar, Bombay - 400 094.

50. Mrs. Kumkum Kausal, D-23, Hastinapur, Anushaktinagar, Bombay - 400 094.

51. Mrs. Geeta Gupta, B-32, Ajanta, Anushaktingar, Bombay - 400 094.

52. Mrs. Mangala Bhate, 16-A, Badrinath, Anushaktinagar, Bombay - 400 094. .. Petitioners

Versus

1. State of Maharashtra through Ministry of Education and Employment and through its Ministry of Finance, Mantralaya, Bombay-32.

2. The Education Inspector, Greater Bombay North Zone, Churchgate, Bombay - 400 020.

3. Head Mistress, Kumud Vidya Mandir, Devnagar Baug, Bombay - 400 088.

4. Chembur High School, Chembur Naka, Bombay - 400 071.

5. Headmaster, Swamivivekanand High School & Junior College, Sindhi Society, Chembur, Bombay - 400 071.

6. Head Master, Padwa High School, Darendra D-12, Anushaktinagar, Bombay - 400 094.

7. Head Master, A F A C English, St. Antony’s Road, Chembur, Bombay - 400 071.

8. Head Mistress,]
Sadhana Vidyalaya, 2, West Sion,]
Bombay - 400 022.]

9. Head Master,]
Nutan Vidya Mandir, Sion-Trombay]
Road, Mankhurd, Bombay - 400 088.]

10. Head Master,]
Maharashtra Aikya Vardak Mandal]
Vidya Mandir, 411, Tilak Nagar,]
Chembur, Bombay - 400 071.]

11. Head Master,]
Sanatan Dharm, R C Marg,]
Chembur, Bombay - 400 074.]

12. Head Master,]
Maratha College, Chembur,]
Bombay - 400 071.]

13. Head Master,]
Lokmanya Tilak English School,]
Chembur, Bombay - 400 071.]

14. Head Master,]
Saraswati Vidyalaya, Chembur,]
Bombay - 400 071.]

15. Head Master,]
People Welfare Society High School,]
Sion, Bombay - 400 022.]

16. Head Master,]
Swami Muktanand High School,]
Subhashnagar, Chembur, Bombay-71.]

17. Head Master AFAC Junior College,]
St. Antony’s Road, Chembur,]
Bombay - 400 071.]

18. Head Master,]
Adarsh Vidyalaya, Sahkar Nagar No.3]
Bombay - 400 071.]

19. Head Master,]
The Andhra Education Society Junior]
College, Wadala, Bombay - 400 031.] .. Respondents

Mr. Mihir Desai with Ms. Ushaji Perry for the petitioners.

Mrs. S.M. Dandekar, AGP, for the respondents No.1 and 2.

CORAM: R.M. LODHA, &
SMT. NISHITA MHATRE, JJ.

DATED: 08TH JANUARY, 2007

JUDGMENT. : [Per R.M. Lodha, J.]

. Fifty-two teachers, who are working in various aided Secondary Schools have approached this Court in challenging the Circular dated 8th January, 1993 issued by the Education Inspector, North Zone, Bombay, directing that the teachers working in aided Secondary Schools whose spouses have been given Government accommodation will not be given house rent allowance.

2. The challenge is founded on three grounds: (i) that in fact the payment under house rent allowance is an allowance to the assistant teachers only notionally classified as house rent allowance; (ii) that house rent allowance is being paid to assistant teachers of aided Secondary Schools for almost thirty years and, therefore, right has accrued to such assistant teachers for house rent allowance and (iii) that teachers working in unaided educational institutions are drawing house rent allowance though

their spouses have been allotted Government quarters. The Circular dated 8th January, 1993 is thus discriminatory.

3. Petitioners have averred that on the basis of scales of recommendation of the Bhole Commission, revised pay-scales were prescribed with effect from 1st April, 1976 for the employees in the recognised, non Government Schools, Secondary Schools, Higher Secondary Schools and Junior Colleges. The Government decided to extend to the employees in private schools aided by the Government, the benefits of Bhole Pay Commission. According to the petitioners, allowances, including house rent allowance, are governed by Government Resolution dated 2nd September, 1989. It is the petitioners' case that house rent allowance as provided in the Government Resolution dated 2nd September, 1989 was made payable to all employees other than those residing in Government owned/hired accommodation without requiring them to furnish rent receipt. But, there was a condition for the employees to furnish a Certificate to the effect that they were incurring some expenditure on rent or making some contribution towards rent. House rent allowance was also made payable to Government employees living in their own house with a condition to furnish Certificate as provided in the Government

Resolution. The petitioners working as teachers in aided schools, though are staying in Government quarters allotted to their respective spouses, their spouses cannot be said to be staying in rent free accommodation. Since spouses were not getting any house rent allowance and rent paying licence fee, the petitioners were rightly getting house rent allowance.

4. On behalf of the State Government, the Deputy Education Inspector has filed Affidavit and justified the Circular dated 8th January, 1993, *inter alia,* by relying on Note-3 appended to Rule 4 (Appendix-XV) of the Bombay Civil Services Rules, 1958. In the Affidavit, the reliance is also placed on Note-2 of Rule 4(iv).

5. We reflected over the matter and in our view, none of the grounds raised by the petitioners has any merit. It is misconceived to say that the allowance paid to the petitioners under the head "House Rent Allowance" is in fact not a house rent allowance and has been notionally classified as house rent allowance. Surely, house rent allowance is a house rent allowance and not any other allowance. This is also clear from the table of house rent allowance appended to the

Government Resolution dated 2nd September, 1989. The first ground, therefore, is devoid of any substance.

6. As regards the second ground, suffice it to say that any payment received by the assistant teachers working in various Government aided schools as house rent allowance though their spouses were in occupation of Government accommodation and such allowance being not permissible in law would not create any right in favour of the petitioners. Nothing has been shown to us which made the teachers working in Government aided schools eligible to house rent allowance where their spouses were in occupation of the Government accommodation and such teachers were staying with their spouses. Rather, we find from Note-3 appended to Rule 4 of the Rules regulating the grant of compensatory local allowance and house rent allowance that where husband and wife both of whom are in Government service and reside in Government accommodation allotted to either of them, the husband/wife who resides with the other has no claim to house rent allowance. It is true that Note-3 of the aforesaid Rules would not apply as it is to the teachers working in Government aided schools as their service is not Government service. However, their position would be no better than that, particularly when the classification has been made by the impugned Circular

dated 8th January, 1993 that house rent allowance should not be paid to the employees of private aided schools who are living in the quarters of the State Government. The said Circular can neither be termed as arbitrary nor unreasonable. Unless expressly permitted by the concerned Rules, the teachers in Government aided schools cannot claim house rent allowance when they are in occupation of the Government accommodation allotted to their spouses.

7. As regards the contention raised by the petitioners that house rent allowance is made applicable to teachers of unaided schools even where their spouses may have been allotted Government quarters or where the teachers whose spouses have been working in private sectors and, therefore, the Circular is discriminatory, suffice it to say that the teachers in Government aided schools fall in a different class and category than the teachers in unaided schools and also the situation where the spouses of such teachers are working in the private sectors and in that capacity, the quarters have been allotted to their spouses from private establishment. The Circular dated 8th January, 1993 is confined to the category of cases where the spouses of the employees in the Government aided schools have been granted

Government quarters. It is not applicable to those category of cases where the spouses of the employees working in Government aided schools are employees in private sectors and have been allotted quarters from private establishments. In Government aided schools, by virtue of Section 4 of the Maharashtra Employees of Private Schools (Conditions of Service Regulations) Act, 1977, the State Government is empowered *inter alia* to make rules providing for allowances to the employees of private schools. There is nothing wrong if by the Circular dated 8th January, 1993 the position has been clarified that the payment of house rent allowance shall not be eligible to the employees of the private aided schools who are living in the quarters of the State Government. There is no discrimination in that. Rather, the classification made by the State Government by the impugned Circular dated 8th January, 1993 is in consonance with the Government policy that where the husband and wife both of whom are in Government service and reside in Government accommodation allotted to either of them, the husband/wife who reside with the other has no claim to house rent allowance. If this policy is applicable to the husband and wife both of whom are in Government service, we find nothing discriminatory or unreasonable where the Government has prescribed that the employees in the Government aided

schools who are living in the Government quarters (by virtue of their spouses being in Government service) shall not be entitled to any claim for house rent allowance.

8. We find no infirmity in the Government Circular dated 8th January, 1993.

9. We find from the proceedings that by virtue of the interim order passed by this Court on 7th January, 1993 the operation of the Circular dated 8th January, 1993 stood stayed and that respondents were directed to continue to pay to the petitioners house rent allowance. Having held that Circular dated 8th January, 1993 is legal and valid, obviously the petitioners who received house rent allowance by virtue of stay order have to restitute the said amount to the Government.

10. We, accordingly, dispose of the Writ Petition by the following order:

(i) Writ Petition is dismissed.

(ii) The petitioners are directed to restitute the amount received by them towards

house rent allowance after 8th January, 1993 in twelve monthly instalments from 1st April, 2007, failing which, the respondents shall be free to recover the said amount from the petitioners who are in service from monthly salary bills from April, 2007 and from the petitioners who have retired from their retirement benefits including pension in twelve instalments with effect from April, 2007.

(iii) It is clarified that refund of house rent allowance shall be for the period the petitioners continued to be in employment and in occupation of the Government accommodation.

. No costs.

Sd/-
[R.M. LODHA, J.]

Sd/-
[SMT. NISHITA MHATRE, J.]